

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-4604

UNITED STATES OF AMERICA,

Plaintiff - Appellee,

v.

JOSEPH GARCIA RAMOS,

Defendant - Appellant.

Appeal from the United States District Court for the Eastern District of Virginia, at Norfolk. Henry Coke Morgan, Jr., Senior District Judge. (2:04-cr-00192-HCM-FBS-1)

Submitted: January 18, 2012

Decided: March 6, 2012

Before KING, AGEE, and DIAZ, Circuit Judges.

Affirmed in part; dismissed in part by unpublished per curiam opinion.

Michael S. Nachmanoff, Federal Public Defender, Frances H. Pratt, Rodolfo Cejas II, Assistant Federal Public Defenders, Norfolk, Virginia, for Appellant. Neil H. MacBride, United States Attorney, Richard D. Cooke, Assistant United States Attorney, Richmond, Virginia, for Appellee.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Joseph Garcia Ramos appeals the district court's order revoking supervised release and sentencing him to nine months' incarceration and fifty-one months' supervised release. Counsel has filed a brief under Anders v. California, 386 U.S. 738 (1967), asserting there are no meritorious issues for appeal but raising for the court's consideration the following three issues: (1) whether the district court failed to consider the Chapter Seven sentencing range; (2) whether the court improperly considered rehabilitation as the primary basis for imposing the sentence; and (3) whether the court imposed a special condition of supervised release without making the requisite statutory findings.

Because Ramos has been released from his nine month period of incarceration, we grant the Government's motion to dismiss the appeal from that portion of the appeal challenging the length of incarceration. See United States v. Hardy, 545 F.3d 280, 283-85 (4th Cir. 2008). In all other respects, we affirm. We will not disturb that portion of the district court's order that imposed as a special condition of supervised release that Ramos successfully complete a substance abuse program and if he fails to do so or is found to have used any illicit substance, the court will order that Ramos not be permitted to operate a motor vehicle for the duration of his

supervised release. We note that Ramos failed to challenge a similar condition on direct appeal. See United States v. Johnson, 138 F.3d 115, 117-18 (4th Cir. 1998). We also note that it is speculation at this juncture that Ramos will violate a condition that will result in him being prohibited by the court from operating a motor vehicle.

In accordance with Anders, we have reviewed the record in this case and have found no meritorious issues for appeal. We therefore grant the Government's motion to dismiss the portion of the appeal challenging the period of incarceration and affirm in all other respects the district court's order. This court requires that counsel inform Ramos, in writing, of the right to petition the Supreme Court of the United States for further review. If Ramos requests that a petition be filed, but counsel believes that such a petition would be frivolous, then counsel may move in this court for leave to withdraw from representation. Counsel's motion must state that a copy thereof was served on Ramos.

We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

AFFIRMED IN PART;
DISMISSED IN PART